

BRB No. 07-0361 BLA

W. Y.)
)
 Claimant-Petitioner)
)
 v.) DATE ISSUED: 02/29/2008
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order on Remand – Denial of Benefits of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Helen H. Cox (Gregory F. Jacob, Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand – Denial of Benefits (2002-BLA-00442) of Administrative Law Judge Ralph A. Romano with respect to a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). This case has previously been before the Board.¹ In its most recent Decision and Order, the Board vacated the

¹ Claimant filed his initial claim for benefits on June 25, 1998, which was denied by Administrative Law Judge Ralph A. Romano (the administrative law judge) on March 1, 2000. Director's Exhibits 1, 59. The Board dismissed claimant's appeal as untimely filed on April 27, 2000. Director's Exhibits 60, 62. Claimant requested modification but the administrative law judge again denied benefits on February 1, 2002. Director's Exhibits 63, 102. Claimant appealed to the Board and, thereafter, filed a Motion to

administrative law judge's determination that the newly submitted evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv) and remanded the case to the administrative law judge for reconsideration pursuant to 20 C.F.R. §725.310 (2000).² *[W.Y.] v. Director, OWCP*, BRB No. 05-0395 BLA (Mar. 31, 2006)(unpub.). On remand, the administrative law judge found that the newly submitted evidence was insufficient to establish that claimant suffers from a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(b)(2)(iv). The administrative law judge concluded, therefore, that claimant failed to establish a change in conditions pursuant to Section 725.310 (2000). Benefits were denied, and the current appeal followed.

Claimant contends that the administrative law judge failed to properly analyze the medical opinion evidence relevant to the issue of total disability, and failed to set forth the rationale underlying his findings as required by the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and U.S.C. §932(a).³ The Director, Office of Workers' Compensation Programs, has responded, urging affirmance of the administrative law judge's finding

Remand to pursue modification. Director's Exhibit 106. The Board dismissed claimant's appeal and remanded the case to the district director for modification proceedings. Director's Exhibit 107. The district director, and subsequently the administrative law judge on July 17, 2003, denied claimant's second request for modification. Director's Exhibits 113, 114. On appeal, the Board affirmed the administrative law judge's finding that there was no mistake in a determination of fact, but remanded the case for reconsideration of whether the evidence established a change in conditions. *[W.Y.] v. Director, OWCP*, BRB No. 03-0744 BLA (July 14, 2004)(unpub.).

² The amended version of 20 C.F.R. §725.310 does not apply in this case, as the claim was pending when the amended regulations became effective on January 19, 2001. *See* 20 C.F.R. §725.2.

³ Claimant preserves, for the purpose of future appeal, the following issues previously considered by the Board: Claimant continues to argue that the administrative law judge did not apply the proper standard of review or evidentiary analysis in evaluating claimant's modification requests, that the administrative law judge erred in finding the July 12, 2002 pulmonary function study invalid, that there was no basis to affirm the administrative law judge's rejection of Dr. Prince's opinion, and that the administrative law judge applied an inconsistent standard of review in accepting the opinion of Dr. Green over that of Dr. Prince. The Board's prior holdings on these issues now constitute the law of the case and will not be disturbed. *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-151 (1990).

that the medical opinion evidence is insufficient to demonstrate that claimant is totally disabled under Section 718.204(b)(2)(iv).

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law.⁴ 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359, 363 (1965).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4, 1-5 (1986)(*en banc*); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986)(*en banc*).

On remand, the administrative law judge considered the medical opinions of Dr. Green and Drs. Matthew Kraynak and Raymond Kraynak. The administrative law judge noted Dr. Green's statements that claimant's pulmonary function test values were skewed by suboptimal effort, and that the arterial blood gas studies showed increased oxygenation with exercise, and he concluded that Dr. Green's opinion that claimant was not totally disabled was well documented and well reasoned. Decision and Order at 3, 6. Stating that Dr. Green, "in effect, found no significant impairment," the administrative law judge considered the physician's qualifications as a pulmonary specialist and found Dr. Green's reasoning with regard to the pulmonary function and arterial blood gas studies, and his findings on physical examination, to be persuasive support for a finding that claimant is not totally disabled. Decision and Order at 4-5.

The administrative law judge contrasted the opinions of Drs. Matthew Kraynak and Raymond Kraynak, observing that:

Drs. M. and R. Kraynak rely in part on invalidated pulmonary function testing, performed no blood gas testing, although the study performed by Dr. Green was reviewed by them, and appear to rely primarily on subjective complaints relayed to them by Claimant. While they also state their reliance on physical findings, their reports are devoid of any well-reasoned explanation of how those findings establish total disability. Dr. R. Kraynak states that he would still find total disability, even if the pulmonary function

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as claimant's coal mine employment occurred in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

testing were excluded from the record, based on Claimant's complaints and physical findings. He fails, however, to explain how these findings establish total disability.

Decision and Order at 6. The administrative law judge noted that the medical reports from Drs. Matthew Kraynak and Raymond Kraynak were "strikingly similar in wording and conclusions," and although both physicians indicated that Dr. Green's pulmonary function study was conducted with "optimal" effort, the physicians "totally ignored" Dr. Green's statement that claimant's effort was suboptimal. Decision and Order at 6. The administrative law judge noted that in attempting to discredit Dr. Green for not outlining the exertional requirements inherent to claimant's previous coal mine employment, Drs. Matthew Kraynak and Raymond Kraynak also failed to specify claimant's specific job duties. Decision and Order at 5. The administrative law judge further found Dr. Raymond Kraynak unpersuasive, because although the physician stated that he would find claimant totally disabled even if the pulmonary function studies were excluded, Dr. Raymond Kraynak "fails however, to explain how these findings establish total disability." Decision and Order at 6. Given the deficiencies that he observed, the administrative law judge found that the opinions of Drs. Matthew and Raymond Kraynak were not credible or persuasive, and concluded that their status as claimant's treating physicians was not entitled to controlling weight. Decision and Order at 6. Conversely, based upon the medical opinion of Dr. Green, "the only pulmonary specialist of the three physicians at issue," the administrative law judge concluded that claimant failed to establish total disability. *Id.* Accordingly, he denied benefits.

After reviewing the administrative law judge's Decision and Order, the briefs of the parties, and the evidence of record, we affirm the administrative law judge's denial of benefits as his finding that claimant is not totally disabled by a respiratory or pulmonary impairment is supported by substantial evidence.

Claimant argues that the administrative law judge erred in rejecting the medical opinions of Drs. Matthew Kraynak and Raymond Kraynak, claimant's treating physicians while relying on Dr. Green's qualifications as a pulmonary specialist. Claimant also asserts that the administrative law judge selectively analyzed the evidence.⁵ We reject claimant's arguments.

⁵ Claimant also contends that the administrative law judge failed to explain the specific bases for his decision, as required by the Administrative Procedure Act (APA), 5 U.S.C. 557(c)(3)(a), as incorporated by 33 U.S.C. §919(d) and 30 U.S.C. §932(a). Contrary to claimant's contention, we hold that the administrative law judge has provided an adequate basis for his findings and, therefore, the Decision and Order satisfies the provisions of the APA. *See* 5 U.S.C. 557(c)(3)(a), as incorporated by 33 U.S.C. §919(d) and 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

In resolving the conflict in the physicians' interpretations of the objective test results, the administrative law judge acted within his discretion as fact-finder in determining that Dr. Green "in effect, found no significant impairment" and that "such a finding is supportive of a finding of no compensable impairment and need not be discussed in terms of former job duties." Decision and Order at 5; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *see also Hillibush v. U.S. Department of Labor*, 853 F.2d 197, 11 BLR 2-223 (3d Cir. 1988); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988). In rendering this finding, the administrative law judge permissibly credited Dr. Green's statement that the results of claimant's qualifying pulmonary function study were skewed by suboptimal effort, a conclusion that Drs. Matthew Kraynak and Raymond Kraynak did not address. Decision and Order at 3; Director's Exhibit 117; *Clark*, 12 BLR at 1-155. The administrative law judge rationally found, therefore, that Dr. Green's opinion, that claimant is not totally disabled, was well reasoned and well documented and, when considered in conjunction with his "excellent qualifications," was more credible and persuasive than the opinions of Drs. Matthew Kraynak and Raymond Kraynak, despite their status as treating physicians.⁶ 20 C.F.R. §718.104(d)(5); *see Balsavage v. Director, OWCP*, 295 F.3d 390, 396-7, 22 BLR 386, 2-396 (3rd Cir. 2002); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Director, OWCP v. Mangifest*, 826 F.2d 1318, 1326, 10 BLR 2-220, 2-238 (3d Cir. 1987); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21-22 (1987). Consequently, we affirm the administrative law judge's finding that claimant failed to prove that he is suffering from a totally disabling respiratory or pulmonary impairment pursuant to Section 718.204(b)(2)(iv). *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); *see also Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2; *Kuchwara v. Director, OWCP*, 7 BLR 1-167, 1-170 (1984).

Although claimant insists that the opinions of Drs. Raymond Kraynak and Matthew Kraynak are reasoned and documented, the administrative law judge is empowered to weigh the evidence and to draw his own conclusions therefrom, and the Board is not empowered to reweigh the evidence or substitute its inferences for those of the administrative law judge. *See Maypray v. Island Creek Coal Co.*, 7 BLR 1-683, 1-686 (1985); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20, 1-23 (1988). As the administrative law judge properly considered the medical opinion evidence on remand and claimant's contentions are tantamount to a request to reweigh the evidence, we affirm the administrative law judge's finding that the new medical evidence is insufficient to establish a totally

⁶ The administrative law judge noted that Dr. Green is Board-certified in internal medicine and pulmonary disease, while Drs. Raymond Kraynak is Board-eligible in family medicine and Dr. Matthew Kraynak is Board-certified in family medicine. Decision and Order at 4.

disabling respiratory impairment under Section 718.204(b)(2)(iv) and thus, insufficient to establish a change in conditions pursuant to Section 725.310 (2000). Thus, we affirm the administrative law judge's denial of claimant's modification request and the denial of benefits. *Nataloni v. Director, OWCP*, 17 BLR 1-82, 1-84 (1993); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156, 1-158 (1990), *modified on recon.*, 16 BLR 1-71 (1992).

Accordingly, the administrative law judge's Decision and Order on Remand – Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge